



United States Department of the Interior
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:
SOL-2019-00012

July 24, 2019

Via Email: 62283-80594567@requests.muckrock.com

MuckRock News
DEPT MR 62283
Attn: Jimmy Tobias
411A Highland Ave
Somerville, MA 02144-2516

Dear Mr. Tobias,

On October 12, 2018, the U.S. Department of the Interior, Office of the Solicitor, received your Freedom of Information Act (FOIA) request. In your request, you specifically ask for:

"Any and all written or electronic communications, including attachments, sent or received by Daniel Jorjani that pertain to the National Park Service's August 2018 proposed rule "to revise special regulations related to demonstrations and special events at certain national park units in the National Capital Region." This request seeks documents produced between March 1, 2018 and October 1, 2018."

In processing your request, for this, the Office of the Solicitor found 368 pages of responsive documents. Upon review 87 pages are being released in full; and 281 pages are being redacted in part. The pages being released in part were redacted pursuant to Exemption 5 deliberative process, attorney-client, and government commercial information privileges; and Exemption 6 personal privacy interests. Please see the attached responsive documents.

Exemption 5 allows an agency to withhold inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency. Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges.

Deliberative Process Privilege

The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will

feel free to provide the decision-maker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public.

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process and may include recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would expose the agency's decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

Attorney-Client Privilege

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice and is not limited to the context of litigation. Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect confidential client-supplied information.

The information that has been withheld under the attorney-client privilege of Exemption 5 constitutes confidential communications between agency attorneys and agency clients related to legal matters for which the client sought professional legal assistance and services. It also encompasses opinions given by attorneys to their clients based on client-supplied facts. Additionally, the Bureau employees who communicated with the attorneys regarding this information were clients of the attorneys at the time the information was generated and the attorneys were acting in their capacities as lawyers at the time they communicated legal advice. Finally, the Bureau has held this information confidential and has not waived the attorney-client privilege.

Attorney Work Product Privilege

As incorporated into Exemption 5, the attorney work-product privilege protects from disclosure any materials prepared by or for a party or its representative (including their attorney, consultant, surety, indemnitor, insurer, or agent) in anticipation of litigation or for trial. The privilege applies once specific claims have been identified that make litigation probable; the actual beginning of litigation is not required. Its purpose is to protect the adversarial trial process by insulating

litigation preparation from scrutiny, as it is believed that the integrity of our system would suffer if adversaries were entitled to probe each other's thoughts and plans concerning the case. The privilege extends to administrative, as well as judicial proceedings. Once the determination is made that records are protected from disclosure by the attorney work-product privilege, the entire contents of those records are exempt from disclosure under FOIA.

The materials that have been withheld under Exemption 5 under the attorney work-product privilege were prepared by or for a Department attorney in reasonable anticipation of litigation and they reflect the parties' pre-litigation thoughts. So we conclude that the withheld materials are protected in full from disclosure by the attorney work-product privilege of Exemption 5.

Government Commercial Information Privilege

We are redacting pages under Exemption 5, the Government Commercial Information Privilege, because those pages contain conference call-in numbers and passcodes. Release of the conference call-in numbers and passcodes to the general public would enable any member of the public to call in and listen to communications on that call-in line, rendering the call-in line useless and requiring the Department to purchase a new replacement call-in line.

Personnel and Medical Files

Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens 'know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

The information that has been withheld under Exemption 6 consists of personal information and email addresses, and we have determined that the individuals to whom this information pertain have a substantial privacy interest in withholding it.

Maria Lurie, Attorney-Advisor, Office of the Solicitor was consulted in reaching this decision.

Lance Purvis, FOIA Officer, Office of the Solicitor, is responsible for making this decision. You may contact the FOIA Officer at sol.foia@sol.doi.gov for further assistance and to discuss any aspect of your request.

This concludes the Office of the Solicitor's response to your request. The fee incurred in responding to your request is less than \$50 and is not being charged in accordance with 43 CFR 2.16(b)(2).

If you consider this response to be a denial of your request, you may appeal this response to the Department's FOIA Appeals Officer. If you choose to appeal, the FOIA Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

FOIA Appeals Officer
U.S. Department of the Interior
1849 C Street, N.W., MS 6556
Washington, D.C. 20240
Phone: 202-208-5339
Fax: 202-208-6677
Email: FOIA.Appeals@sol.doi.gov

You must include with your appeal copies of all correspondence between you and the Office of the Solicitor concerning your FOIA request, including a copy of your original FOIA request and your denial letter. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal. All communications concerning your appeal, including envelopes, should be clearly marked with the words "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the Office of the Solicitor's response is in error. For more information on FOIA Administrative Appeals, you may review the Department's FOIA regulations at 43 C.F.R. Part 2, Subpart H.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lance Purvis', with a stylized flourish at the end.

Lance Purvis
Office of the Solicitor FOIA Officer